

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No.27057 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE D.A.MEHTA Sd/-

1	Whether Reporters of Local Papers may be allowed to see the judgment ?
2	To be referred to the Reporter or not ?
3	Whether their Lordships wish to see the fair copy of the judgment ?
4	Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
5	Whether it is to be circulated to the civil judge ?

ISMAILBHAI MUSABHAI RADHANPURI & 2 - Petitioner(s)
 Versus
 JANTA CO-OPERATIVE BANK LTD. & 1 - Respondent(s)

Appearance :

MR VIKRAM J THAKOR for Petitioner(s) : 1 - 3.

NOTICE SERVED BY DS for Respondent(s) : 2.

MR PV NANAVALI for Respondent(s) : 1,

MR VIBHUTI NANAVALI for Respondent(s) : 1,

CORAM : HONOURABLE MR.JUSTICE D.A.MEHTA

Date : 01/02/2007

ORAL JUDGMENT

- (1) The scope of the controversy in this petition lies in a very narrow compass. Hence, with the consent of the learned advocates appearing for the respective parties, the matter is taken up for final hearing and disposal today. RULE. The learned advocate for the respondent No.1 waives service of rule.

- (2) As per respondent No.1-Bank petitioner No.1 had obtained loan to the extent of Rs.1,20,000/- for the purposes of business on 25.07.1992. Petitioner Nos.2 and 3 are the sureties to the said loan transaction. On failure of petitioner No.1 to repay the loan and discharge the liability the respondent-Bank instituted Lavad Suit No.1432 of 1998 before the Board of Nominees praying for a decree for a sum of Rs.2,81,619/- with interest @ 18.5%. On 27.11.2000 the Board of Nominees dismissed the suit by judgment and order on the ground that suit was not maintainable in light of the provisions of Section 96 of the the Gujarat Co-operative Societies Act, 1961. In other words, according to the Board of Nominees, the Board of Nominees did not have jurisdiction to entertain and hear the suit.
- (3) Respondent No.1-Bank carried the matter in appeal being Appeal No.126 of 2001 before the Gujarat State Co-operative Tribunal. The principal prayer, as can be seen from prayer clause 2(A) in the said appeal, was that the order of Board of Nominees be held as being illegal, erroneous and a nullity; with a further prayer

that the case may be remanded to the Board of Nominees in the interest of justice.

- (4) The Tribunal, vide impugned judgment and order dated 29.11.2006 accepted the contentions raised on behalf of the respondent-Bank (appellant before the Tribunal) that the Board of Nominees had erred in coming to the conclusion that the Board of Nominees did not have jurisdiction to entertain and hear the suit. However, instead of thereafter remanding the matter to the Board of Nominees for adjudication of the dispute on merits, the Tribunal has accepted the case of the plaintiff i.e. the respondent-Bank and decreed the suit in favour of the respondent-Bank.
- (5) Learned advocate for the petitioners has challenged the impugned order of the Tribunal mainly on the ground that once the Tribunal had come to the conclusion that the Board of Nominees had jurisdiction, the Tribunal ought to have remanded the matter back to the Board of Nominees for taking a decision on merits. Learned advocate for respondent No.1-Bank has submitted that in terms of the

Memorandum of Appeal and more particularly prayer clause 2(A), the Tribunal could have remanded the matter to the Board of Nominees but if the Tribunal did not do so, it cannot be held that the impugned order of the Tribunal suffers from any infirmity so as to call for intervention. That an appeal being continuation of the suit it is always open to the appellate authority to exercise all those powers which are available to the original authority, and in this case, hence, decide the suit finally.

- (6) There can be no dispute with the proposition made on behalf of the respondent-Bank that an appeal is a continuation of the suit proceedings and the powers of an appellate authority are co-extensive and co-terminus with that of the subordinate authority from whose order the appeal emanates. However, in a case like the present one, the said principle cannot be invoked for the simple reason that the Board of Nominees had at no point of time entered into any discussion on merits of the case. The Board of Nominees had in fact declined to entertain the suit on the ground of lack of jurisdiction. Therefore, the suit

was decided only on a preliminary issue and a decision on merits was yet to be recorded by the Board of Nominees.

- (7) In the aforesaid circumstances, it is apparent that the impugned order dated 29.11.2006 made by the Tribunal cannot be upheld to the extent the said order finally decides the merits of the suit. In the result, the impugned order dated 29.11.2006 made in Appeal No.126 of 2001 is quashed and set aside to the extent the suit is decreed while sustaining the rest of the order wherein the Tribunal comes to the conclusion that the Board of Nominees has jurisdiction to entertain and hear the suit on merits. As a natural corollary the suit viz. Lavad Suit No.1432 of 1998 stands restored to the file of the Board of Nominees for being adjudicated afresh on merits.

- (8) The petition is allowed in the aforesaid terms. Rule made absolute. There shall be no order as to costs.

Sd/-
[D.A. MEHTA, J]

Bhavesh*